IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4278 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANGNA COOPERATIVE HOUSING SOCIETY LIMITED - Petitioner(s)
Versus
JYOTIBEN JOGIBHAI PATEL & 4 - Respondent(s)

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Appearance :

MR DD VYAS, SR. ADVOCATE WITH MR UTKARSH JANI FOR M/S.VYAS ASSOCIATES for Petitioner(s) : 1,
MR BS PATEL for Respondent(s) : 1,
MRS RANJAN B PATEL for Respondent(s) : 1,
MS KIRAN D PANDEY for Respondent(s) : 2,
MR SIRAJ GORI for Respondent(s) : 3 - 5.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 29/06/2006 & 01/07/2006

ORAL JUDGMENT

1. This petition has been filed by a Co-operative Housing Society (hereinafter to be referred to as

"the petitioner Society") challenging the order dated 13th January 1995 passed by the District Registrar of Cooperative Societies, Surat as upheld by the order dated 30th March 1996 passed by the Additional Registrar (Appeals), Cooperative Societies, Government of Gujarat and further order dated 13th March 1997 passed by the Deputy Secretary (Appeals) Agriculture, Cooperation and Rural Development Department, Government of Gujarat.

2. At the outset, facts leading to this petition can be noted. The petitioner is a housing society in which respondent No.1 herein was in possession of bungalow No.19 as a member of the Society. Respondent No.1 was desirous of transferring her right, title and interest over the said property in favour of respondent No.2. Respondent No.1, therefore, made an application to the petitioner Society seeking permission to transfer the property rights. Such an application was, however, rejected by the petitioner Society on 21st August 1993. Respondents Nos.1 and 2, therefore, jointly applied before the District Registrar, Cooperative Societies, Surat under the provisions of the Gujarat Cooperative Societies Act (hereinafter to be referred to as the "said Act") and challenged the decision of the Society in this regard. The District Registrar, by his order dated 13.1.95 set aside the order of the petitioner

Society dated 21.8.93. The petitioner Society being aggrieved by the order passed by the District Registrar preferred a revision application before the Additional Registrar, Cooperative Societies which revision, however, came to be rejected by the said authority by the order dated 30th March, 1996. The petitioner Society preferred further revision application before the State Government which also came to be rejected by the Deputy Secretary by the order dated 13th March 1997. The above-mentioned orders passed by the District Registrar and those passed by the higher authorities upholding the said order have been challenged by the petitioner in this petition.

3. Broadly stated, the stand of the petitioner Society before this Court has been that the petitioner is a Cooperative Housing Society and no person has an unfettered and unlimited right to become a member thereof. It is contended that respondent No.1 could not have unilaterally transferred her right, title and interest over the bungalow in question in favour of respondent No.2 nor could respondent No.2 insist on being accepted as member of the society without fulfilling the necessary conditions laid down under the bye-laws.

4. On the other hand, case of respondents Nos.1 & 2 before this Court has been that the petitioner-

Society without any valid reasons refused to permit respondent No.1 to transfer her rights over the plot in question in favour of respondent No.2. It is contended that respondent No.2 fulfills all the necessary conditions for being a member of the society and that respondent No.2 was in no way disqualified to become a member. Under such circumstances, it was not open for the petitioner-Society to arbitrarily refuse to accept the application of respondent No.2 to become member of the Society.

5. Before the controversy can be resolved, certain factual aspects need to be highlighted.

5.1 As noted earlier, respondent No.1 was a member of the petitioner-Society and was in possession of bungalow No.19 thereof. With a view to transferring her right, title and interest over the property in favour of respondent No.2, she applied to the society seeking such a permission, which was rejected by the petitioner-society by resolution dated 21.8.93. From the impugned order passed by the District Registrar, it can be seen that the only ground on which such an application came to be turned down was that respondent No.1 had made an application seeking permission of the society to transfer her right over the bungalow No.19 in favour of respondent No.2 on 9.8.93. However, she had already sold the property to

respondent No.2 in July 1993. It was on this ground that respondent No.1 had not sought permission of the Society before transferring the property in question that her application came to be rejected vide communication dated 25.8.93.

5.2 Respondents Nos.1 & 2 therefore approached the District Registrar by filing an application described as one filed under the provisions of section 24 of the said Act and rule 12(2) of the Gujarat Cooperative Societies Rules 1965 (hereinafter to be referred to as “the said Rules”). As noted earlier, the application for transfer of bungalow No.19 made by respondent No.1 was though rejected by the petitioner society on the above mentioned limited ground, before the District Registrar, several objections were raised to oppose the application filed by respondents Nos.1 & 2. On behalf of the petitioner-society, it was sought to be canvassed before the District Registrar that the petitioner-society is a housing society whereas respondent No.2 proposed to utilise the property in question for commercial purpose of setting up a dispensary. It was contended that such commercial use is not permissible in the petitioner-society which is a cooperative housing society. It was also contended that the District Registrar has no jurisdiction to entertain the application filed by respondent No.2. It was also contended that respondent No.2 is a member

of another cooperative society in whose name a bungalow has been alloted. It was, therefore, contended that he cannot enjoy membership of another cooperative society or seek allotment of second bungalow.

5.3 In this regard, the contentions of respondent Nos.1 & 2 before the District Registrar were that the application is maintainable particularly under rule 12(2) of the said Rules; that in July 1993 there was no sale deed entered into between the parties and there was only an agreement to sell which cannot be termed as having transferred the property and the opposition of the society that no permission was sought before transferring the property, therefore, cannot be sustained. It was further contended that use of the bungalow is not for commercial purpose; that the intention of using the bungalow for residence-cum-dispensary cannot be termed as commercial purpose and in any case, the application for transfer was not turned down on this ground. It was also pointed out that large number of other residential houses in the same society have been put to commercial use. It was further contended that respondent No.2 does not enjoy allotment of any other bungalow in any other cooperative society.

5.4 The District Registrar was pleased to accept the contention of respondents Nos.1 & 2. The District

Registrar was pleased to come to the conclusion that respondent No.2 is qualified for being a member of the petitioner-society; that only on the ground that prior permission was not obtained, the society could not have refused to transfer the right over the property and that if there was breach of of the bye-laws of the society, appropriate steps could be taken for the same. He also came to the specific conclusion that in the same co-operative society, there are large number of members who are enjoying membership in more than one cooperative society. The District Registrar also found that there are number of residential houses in the society which are being used for commercial purpose and the society has not raised any objection in this regard.

6. Further revision application filed by the petitioner-society came to be turned down accepting the order passed by the District Registrar.

7. On the basis of the above factual background, learned advocates appearing for the parties have advanced detailed arguments before this Court.

8. Primarily, it was the contention of the learned advocate Shri DD Vyas for the petitioner-society that the District Registrar gravely erred in accepting the application of respondent Nos.1 & 2 seeking direction against the society to transfer the right, title and interest of respondent No.1

over the property in question in favour of respondent No.2. He contended that respondent No.2 could not have insisted on being a member of the society. He submitted that respondents Nos.1 & 2 did not seek prior permission of the society before entering into the sale deed. He submitted that respondent No.2 had all along intended to convert the bungalow into a full-fledged dispensary. Such use cannot be permitted in the cooperative housing society particularly when the bye-laws of the petitioner society prohibit any such use. He submitted that during the pendency of the petition also, respondent No.2 has continued to utilise the bungalow in question as a dispensary. He submitted that during the course of arguments also on behalf of respondent No.2 it was clearly indicated that such use cannot be discontinued. He also submitted that respondent No.2 was already holding a bungalow in another cooperative society and could therefore not have become a member of the petitioner-society as per the bye-laws of the society. He also contended that the application filed by respondents Nos.1 & 2 before the District Registrar itself is not maintainable. He submitted that section 24 of the said Act has been struck down having been declared ultra vires the Constitution by a Division Bench of this Court in the case Amreli Dist. Coop.

Sale & Purchase Union v. State, 1984 (2) GLR 1244. He submitted that the Division Bench in the said decision having struck down the entire section 24 of the said Act, remedy of appeal as envisaged under section 24 before the same was held ultra vires in case a society refuses to accept any person as member of the society would not survive. He submitted that except section 24 before the same was struck down, there is no other provision under the said Act which would permit the said respondent to apply to the District Registrar against the decision of the petitioner society.

9. In support of the contention, strong reliance was placed on the Division Bench decision in the case of Amreli District Cooperative Societies (supra) wherein as noted above, the Division Bench of this Court was pleased to strike down the validity of section 24 of the Act as amended by the State Legislature. In addition thereto, strong reliance is also placed on the decision of the Hon'ble Supreme Court in the case of Zeroastrian Cooperative Housing Society Ltd v. Dist. Registrar, Co-op. Societies (Urban), AIR 2005 SC 2306 wherein the Hon'ble Supreme Court held that if the bye-law of the cooperative society prohibits transfer of property by a member to a non-member, the same would not violate section 10 of the Transfer of Properties

Act and since such a bye-law does not place absolute restriction on the right of transfer the same would also not be offending Article 300-A of the Constitution of India.

9.1Learned advocate Shri DD Vyas also submitted that as per the bye-laws of the society, one of the conditions agreed upon between the members was that the members shall not transfer the plots or bungalows alloted to them for a period of ten years and the respondents Nos.1 & 2 had breached this condition also.

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10.On the other hand, learned advocate Shri B.S.Patel for the concerned private respondents sought to support the decision of the authorities in this regard. He submitted that the petitioner-society had without any valid reasons or basis refused to permit the transfer of the bungalow in question. He submitted that such a permission could not have been withheld without proper reasons. He further submitted that the sole ground indicated in the communication dated 25.8.93 by the society to refuse permission to transfer was that prior permission was not obtained before entering into the transfer. He further submitted that respondent No.2 was duly qualified to become a member of the petitioner-

society. As per sub-rule (2) of rule 12 of the said Rules, no cooperative society is authorized to refuse admission to its membership to any person without sufficient cause who is duly qualified under the provisions of the Act and its bye-laws if the existing member of the society wants to sell or transfer the plot or house to such person. On the basis of the provisions contained in sub-rule (2) of rule 12 of the said Rules, he submitted that there is nothing in the bye-laws of the society which would disqualify respondent No.2 from becoming its member and therefore it was not open for the petitioner-society to refuse to admit respondent No.2 to its membership without sufficient cause.

10.1Reliance was placed on a Division Bench decision of this Court in the case Jain Merchant Coop. Housing Society Ltd v. HUF of Manubhai 1995 (1) GLR 19 wherein the Division Bench was of the opinion that despite section 24 of the said Act having been struck down as being unconstitutional by the Division Bench of this Court in the case of Amreli District Cooperative Sale & Purchase Union Ltd (supra), rule 12 (2) of the said Rules would survive. Learned advocate Shri Patel pointed out that the Division Bench of this Court in the case of Jain Merchant Coop Housing Society Ltd (supra) upheld the right of the citizen to seek membership of a cooperative society on

the strength of the provisions made in sub-rule (2) of rule 12 of the said Rules and that it is not open for the society to refuse such membership without sufficient reasons.

10.2 Learned advocate Shri Patel further submitted that in the decision of Zoroastrian Co-op Housing Society Ltd (supra) the decision of the Division Bench of this Court in the case of Jain Merchants Cooperative Housing Society Ltd. (supra) was considered with approval. He submitted that in the case of Zoroastrian Coop. Housing Society Ltd (supra), the Hon'ble Supreme Court though found that through the bye-laws, it is open for the society to restrict its membership only for members belonging to certain community, ratio laid down therein would not apply in the facts of the present case since there is no such provision in the bye-laws of the petitioner-society and since respondent No.2 fulfills all the necessary requirements of being a member of the petitioner-society and is otherwise not disqualified to be a member, his request for being granted membership of the society could not have been turned down.

10.3 It was further contended that the objection with respect to the proposed use of the property cannot be pressed in service by the petitioner. The refusal to accept the request for transfer was solely on the

basis that the application was made after the transfer. No other grounds were communicated in the decision of the society. In any case, if the property is being put to use for commercial purpose, the same can be a subject matter of dispute between the parties and the entry of respondent No.2 as a member of the society at the very threshold could not have been blocked.

10.4 He further contended that when the petitioner-society was considering the application for permitting the parties to transfer the property and to admit respondent No.1 as member of the society, there was nothing on record to suggest that there is any proposal to put the property to any other use than residential use. He further submitted that even subsequently, respondent No.2 has never utilised the property for commercial purpose. Respondent No.2 is residing at the said bungalow with his family. Simultaneously if a small dispensary is run, the same cannot be categorized as putting the property to commercial use. In this regard, he further submitted that the Surat Urban Development Authority (SUDA for short) has categorized the city into different zones. The property in question falls in the residential zone and the SUDA regulations and the development plan permits various uses in residential zone also. From the zone table for the area in question, he pointed

out that in the residential zone the type of development for which the zone is primarily shown besides including all types of residential dwellings,flats, etc. also includes commercial use such as shopping/commercial centre, restaurant, hotel, nursing home, surgical hospital, etc. On the basis of these regulations, he sought to urge before this Court that running a dispensary in a residential unit cannot be termed as a commercial activity.

10.5 He further submitted that large number of members of the petitioner-society have converted their residential bungalows into commercial properties and shops, xerox centres and telephone booths are being run from different residential bungalows and respondent No.2 is being targeted whereas other members are not being questioned.

10.6 With respect to the proposed transfer of property before a period of ten years, he submitted that there is no such absolute ban under the bye-laws and large number of other members were permitted to transfer their properties well before the said period.

10.7 With respect to the question of competence of the District Registrar to entertain the application filed by respondent Nos.1 & 2 seeking direction against the petitioner to admit respondent No.2 as a member of the society, he submitted that powers are available under the said Act with the Registrar. He

sought to place reliance on the provisions contained in section 82 and 160 of the said Act and urged that the District Registrar has powers to give directions to the society in appropriate cases. He also placed reliance on the two decisions of this Court in Amreli District Coop. Sale and Purchase Union (supra) and Jain Merchant Coop. Housing Society Limited (supra) wherein it is observed that it is open for the parties to approach the District Registrar under his extra-ordinary powers.

11. Learned AGP Shri Gori appearing for the authorities had also opposed the petition and submitted that the authorities were competent to pass the impugned orders and on the basis of the material available on record had allowed the application of respondents Nos.1 & 2. The said orders in exercise of powers under Article 227 of the Constitution call for no interference.

12. I have heard the learned advocates appearing of the parties at considerable length. At the outset, it is clear that the sole ground on which the petitioner society had sought to reject the application of respondents Nos.1 & 2 seeking permission to transfer the bungalow in question in favour of respondent No.2 was that no prior permission was obtained from the society. No other grounds were urged or sought to be relied upon by

the society at the time when the application was rejected.

13. The question whether respondent No.2 had a right to insist that he be admitted to the membership of the petitioner-society and whether respondent No.1 had a right to choose its legal successor by way of transfer calls for consideration before deciding other issues.

14. In this regard, it may be noted that by an amending Act, viz. Gujarat Cooperative Societies (Amendment & Validation) Act, 1982 certain changes were introduced in the then existing section 24 of the said Act. In the amended provisions of section 24 of the said Act, it was provided that no society shall without sufficient cause refuse admission to membership to any person duly qualified thereof under the provisions of the said Act, rules and the bye-laws of such society. This provision was contained in sub-section (1) of section 24 of the said Act. Sub-section (2) of section 24 of the said Act as introduced by the amending Act provided for deemed admission of a person if for a period of three months from the date of receipt of an application by the society, the society does not communicate its decision to the concerned person. Sub-section (4) of section 24 of the said Act provided for an appeal before the District Registrar

to any other person who is aggrieved by the decision of the society in this regard. These provisions of the Amending Act in section 24 of the said Act came to be challenged before the Division Bench of this Court in the case of Amreli Dist. Cooperative Sale & Purchase Union (supra). The Division Bench struck down the constitutional validity of the said provisions observing in para 54 of the judgment that the Court is in complete agreement that open membership does not mean that anybody can demand as of right admission to any co-operative society. It was further observed that it only means that the society must keep the doors open for all such persons who are prepared to subscribe to their objectives. In para 55 of the decision, it was further observed that sub-section (1) of section 24 of the said Act is violative of Article 19(1)(c) of the Constitution. It was observed that the marginal note of section 24 indicates that it provides for open membership which only postulates that the society has to keep its doors open for all those persons who are prepared to subscribe to their objective and there should be no restrictive clause refusing membership on the ground of caste, creed or religion, etc.

14.1 The decision of the Division Bench of this Court in the case of Amreli Dist. Cooperative Sale & Purchase

Union (supra) was considered in the subsequent decision in the case of Jain Merchant Coop. Housing Society Ltd. (supra) in which the Division Bench was of the opinion that the society is not clothed with unfettered power and if at all the society refused or denies membership on some flimsy and trivial ground, it will be open to the aggrieved party to move the Court or the authorities under the Act. It was further observed that when there is a right and remedy available to the person, who has been denied the membership, it does not stand to reason that the society has any such absolute right. It was further observed that the provisions of sub-rule (2) of rule 12 of the said Rules regulate the composition of the society and the language thereof makes the transfer of the plot permissible and provides that no cooperative society shall without sufficient cause refuse membership to any person duly qualified under the Act, Rules and the bye-laws and if an existing member of the petitioner society wants to sell or transfer his plot of land or house to another person, who is duly qualified, the society in absence of sufficient cause cannot refuse permission to any existing member to sell or transfer his plot of land to another person, who is duly qualified to be come its member. It was observed that the rule, therefore, clearly postulates the transfer of the plot of land by the existing

member in favour of another person who intends to be and is qualified to become a member. He may acquire membership after completion of the transaction but there is no bar to the transfer of the plot in his favour in case he desires to be a member subject to the conditions that is qualified to be a member of the society. It was further observed that the provisions contained in rule 12(2) of the Rules are in conformity with the rights of the members of the society with regard to the transfer of the plot under Article 300-A of the Constitution and there is nothing in rule 12(2) which may seek to impinge upon the society's right under Article 19(1)(c) of the Constitution and to that limited extent the decisions of the Division Bench in the case of Amreli Dist. Cooperative Sale & Purchase Union (supra) stands diluted by what has been held by the Supreme Court in Daman Singh's case (AIR 1985 SC 973) particularly in para 9 thereof.

14.2 In the case of Zoroastrian Coop. Housing Society (supra), the concept of open membership took a bit of beating. The Hon'ble Supreme Court was considering the situation where the cooperative society wished to limit its membership only to certain community. It was in this regard the Hon'ble Supreme Court found that if the bye-laws of the society restrict membership to the members of one community,

the same cannot be considered as illegal when neither the Act nor the Rules prohibit it. It was found that the concept of public policy cannot be applied to such restrictions. It was the view of the Hon'ble Supreme Court that such freedom cannot be curtailed relying on the fundamental rights. In face of the provisions contained in section 24 of the said Act (which the learned advocate Shri BS Patel submitted were not shown to have been declared unconstitutional by the Division Bench), the Hon'ble Supreme Court found that it would still be open for a co-operative society to make bye-laws and restrict its membership only to members of a particular community. Significantly, in this case, however, there is no such restriction contained in the bye-laws of the petitioner-society. In fact it has not been even the case of the learned advocate for the petitioner that the membership was refused to respondent No.2 on such ground of restricted membership in the petitioner-society.

15. In view of the above judicial pronouncements it would appear that though it may be open for a cooperative society to limit its membership on community ground, no such restrictive clause could be found in the bye-laws of the society and therefore, it would not be open for the co-operative society to reject the application for transfer of property without sufficient reasons. As held by the

Division Bench of this Court in the case of Jain Merchants Cooperative Housing Society Ltd. (supra) unless it is found that the intending member is not qualified to become member of the society, it would not be open for the society to turn down the request on any flimsy ground.

16. In the present case, as noted earlier, the sole reason for refusing to permit the transfer of property and to permit respondent No.2 to become a member of the society was that prior permission of the society was not obtained. Nowhere through the material on record, it has been established by the petitioner-society that respondent No.2 was not qualified for being a member of the petitioner-society or that he was facing any kind of disqualification. In that view of the matter, it was not open for the petitioner-society to refuse membership to respondent No.2 nor was it open for the petitioner-society not to permit respondent No.1 to transfer the property in favour of respondent No.2. The provisions contained in rule 12(2) of the said Rules are amply clear in this regard. It is specifically provided that no co-operative society shall without sufficient cause refuse admission to its membership to any person duly qualified under the provisions of the Act or its bye-laws to whom an existing member of the society wants to sell or

transfer his plot of land or house, no such society shall without sufficient cause refuse to give permission to any existing member to sell or transfer his plot of land or house to another person who is duly qualified to become its member. Contents of sub-rule (2) of rule 12 of the Rules have been elaborately considered by a Division Bench in the case of Jain Merchants Cooperative Housing Society Ltd. (supra) and the Division Bench had come to a specific conclusion that no co-operative society shall without sufficient cause refuse membership to any person duly qualified under the Act, Rules and the bye-laws and if the existing member of the society wants to sell or transfer his plot of land or house to another person, the society in absence of sufficient cause cannot refuse such permission. The said rule was found to be in conformity with the rights of the citizens under Article 300A of the Constitution of India and not found opposed to the provisions contained in Article 19(1)(c) of the Constitution. To my mind, to that extent, the situation has not been altered by the Hon'ble Supreme Court in the case of Zoroastrian Co-op. Hsg. Society Ltd. (supra). As noted earlier, the question before the Hon'ble Supreme Court was with respect to the restriction of membership to particular community by the society. In this

regard, it was found that the bye-laws cannot be declared as illegal.

17. With this background in mind, remaining contentions raised by the learned advocates can be dealt with.

18. It was urged on behalf of the petitioner-society that respondent No.2 has been making commercial use of the property in question whereas the petitioner cooperative society is s housing co-operative society and its bye-laws prohibit any use other than purely residential use. In this regard, it needs to be stated that this was not the ground on which the decision of the society was based. The said ground, therefore, cannot be allowed to support the decision to refuse entry to respondent No.2 as member of the society and to refuse respondent No.1 to transfer her property. Additionally, there is insufficient evidence on record to permit this Court to embark upon an inquiry whether subsequently also, respondent No.2 has been using the property for commercial purpose. It will be a question of different complexion altogether if respondent No.2 has breached any of the provisions made in the bye-laws of the society and has put the property to unauthorized use. In the facts of the present case, however, that cannot be pressed in service to support the decision of the society to reject the application for transfer. I am, however, not

inclined to accept the contention of the learned advocate Shri BS Patel appearing for respondent Nos.1 & 2 that since the zone table for the area in question permitted use other than residential use in the residential zone also, by that account alone running of a dispensary or hospital in residential area would amount to residential use and would not amount to breach in the conditions of bye-laws. The building regulations and zoning tables are prepared by the authorities under the Town Planning Act. The same have entirely different purpose. The specifications made in such regulations cannot be *ipso facto* apply in case of cooperative housing societies to judge the use of the property to ascertain whether the same amounts to residential use or not. Surely, there are large number of commercial activities such as, shops, hotels, restaurants, etc. permitted in residential zones under different building bye-laws. It cannot, therefore, be argued that such uses are residential uses. The said contention, therefore, cannot be accepted. I however find it clear that this cannot be a ground for the petitioner to substantiate its decision to reject the application of respondents Nos.1 & 2. In case it is found that respondent No.2 is putting the property in question to any unauthorized use, it is always open for the

petitioner-society to take suitable steps.

19. With respect to the objection regarding transfer of property before the requisite period of time, there was ample material on record to suggest that there were large number of other persons who were permitted such transfer well before the period of ten years was over. Respondents Nos.1 & 2 had established before the Authorities that it was in their case alone such objections were raised. Learned advocate Shri Patel correctly pointed out the provisions made in the bye-laws in this regard did not restrict such transfer under all circumstances. Restriction is flexible and there is enough power to the society to waive the requirement in appropriate cases. When the petitioner society had not raised this objection in large number of other cases as found by the authorities below, the same could not have been pressed in service, that too without elaborating any reasons for taking such a stand. To repeat, this was also not a ground on the basis of which the society had based its decision to reject the application of respondents Nos.1 & 2.

20. With respect to the sole ground for rejection of the application, it can be seen that the authorities have come to the conclusion that respondents Nos.1 & 2 had only entered into an agreement to sell the

property on 16.7.93 and that therefore the objection of the society was not valid. Even otherwise, it is doubtful whether only on this technical ground, the society could have declined to permit the parties to transfer the property. Though the requirement of insisting that proper permission of the society be obtained has its own sanctity and valid reasons for introduction of such a requirement, the learned advocate Shri DD Vyas also stated that in a given case that itself may not be a sufficient reason to refuse permission to transfer if otherwise all other requirements are fulfilled and the intending member is qualified to become a member of the society and agrees to subscribe to the rules, regulations and bye-laws of the society. In that view of the matter, I do not find that the authorities committed any error in overruling the above objection.

21. With respect to the contention that the application filed by respondents Nos.1 & 2 was not maintainable before the District Registrar, it may be noted that in the decision of Amreli District Coop. Sale and Purchase Union (supra), a Division Bench of this Court had clearly observed in para 55 that an aggrieved person has always a right to move the courts by seeking appropriate remedies by regular civil action in civil Court or before Registrar by invoking his special jurisdiction where the

membership is refused on flimsy and trivial grounds. In the present case, when respondents Nos.1 & 2 could make out a clear case of violation of the provisions of sub-rule (2) of rule 12 of the said Rules, it is open for those persons to approach the District Registrar against their perceived injustice. Though learned advocate Shri BS Patel appearing for respondents Nos.1 & 2 relied on the provisions contained in section 160 of the said Act, and the decision of this court in the case of Motibhai R. Chaudhary v. Registrar, Coop. Societies, 2004 (3) GLR 2251, I am unable to trace the origin of such powers with Registrar in section 160 of the said Act. The Division Bench in the case of Motibhai R. Chaudhary (supra) was considering the validity of the powers exercised by the Registrar to issue directions to convene a meeting of no confidence in the Chairman when 13 out of 15 members of the Managing Committee had made such a demand despite which meeting was not convened. It was under those circumstances, the aggrieved members approached the District Registrar who ordered convening of the meeting. The Division Bench was of the opinion that the District Registrar was justified in exercising such powers and giving directions under sub-section (1) of section 160 of the said Act. Sub-section (1) of section 160 of the

said Act empowers the Registrar on his own motion or otherwise, if he is satisfied that in public interest or for the purposes of securing the proper implementation of co-operative production and other development programmes approved or undertaken by the State Government or for linking and co-ordinating of co-operative activities such as marketing and credit or securing the proper management of the business of the society generally or preventing the affairs of the society being conducted in a manner detrimental to the interests of the members or of the depositors or the creditors thereof, to issue directions to any class of societies generally or to any society or societies in particular, if he finds it so necessary. I am unable to see how powers can be exercised by the Registrar under sub-section (1) of section 160 of the said Act to give direction to the society to enter a person as member of the society and to permit the existing member to transfer a plot or house in favour of such an intending member. Sub-section (1) of section 160 of the Act empowers the Registrar to exercise powers on an entirely different set of circumstances and for entirely different set of purposes. Even the group of words “in a manner detrimental to the interests of the members” are to be read in conjunction with the

other provisions contained in the said sub-section and individual grievances as involved in the present case cannot be examined by the Registrar under the said provisions.

22. Roots of powers of the Registrar can be traced in the provisions contained in section 82 of the said Act. Section 82 of the said Act, so far it is relevant, reads as follows:

> “82. Registrar's power to enforce performance of obligation:-
>
> 1. It shall be the duty of every society to keep the prescribed books of accounts with respect to all sums of money received and expended by the society, and the matters in respect of which the receipt and expenditure take place, all sales and purchases of goods by the society and the assets and liabilities of the society and to furnish such statements and returns and such records to the Registrar as the Registrar may by order direct from time to time; and the officer or officers of the society shall be bound to comply with the order within the period specified therein.
> 2. Where any society is required to take any action under this Act, the rules or the bye-laws, or in compliance with an order made under sub-section (1) and such action is not taken -
>
> (a) within the time provided in this act, the rules or the bye-laws, or the order, as the case may be, or

(b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing, the Registrar may himself, or through a person authorised by him, take such action, at the expenses of the society; and such expense shall be recoverable from the society as if it were an arrear of land revenue."

Sub-section (1) of section 82 of the said Act thus empowers the District Registrar to give directions to the society from time to time under certain circumstances and the officers of the Society are bound to comply with such directions. Under section (2) of section, the Registrar has power to require the society to take action under the Act, Rules or the by-laws or in compliance with an order made under sub-section (1) within the time provided for taking such action or where no such time is provided within such time as may be prescribed by the Registrar.

23. In view of the provisions contained in section 82 of the said Act and in view of the observations made by two Division Benches of this Court noted herein-above, I am unable to accept the contention of the learned advocate for the petitioner Shri DD Vyas that the Registrar had no power to issue directions and accept the application made by respondents Nos.1

& 2.

24. In the result, the petition fails and is hereby rejected. Rule is discharged.

(Akil Kureshi, J.)

(vjn)